

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERNEST AND DIANA MIRANDA,

Plaintiffs,

-v-

ABEX CORP., *et al.*,

Defendants.

RICHARD J. SULLIVAN, District Judge:

No. 08 Civ. 4231 (RJS)

ORDER

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DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: <u>5/28/08</u>

On May 2, 2008, defendant Canadian Commercial Corporation (“CCC”), a company wholly owned by the government of Canada, removed the above-entitled action from the Supreme Court of the State of New York, New York County, to this Court on the basis of the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. § 1602, *et seq.* By stipulation dated May 19, 2008, plaintiffs dismissed their claims against CCC and submitted a motion to remand this action to New York State court pursuant to 28 U.S.C. § 1447. Specifically, plaintiffs assert that, because “[n]o other defendant is covered by FSIA,” “there is no basis on which to maintain the case in Federal Court.”¹ (Pl.’s May 19, 2008 Motion.) The Court agrees.

Accordingly,

IT IS HEREBY ORDERED that this action is REMANDED to the Supreme Court of the State of New York, New York County. *See* 28 U.S.C. § 1447 (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”).

SO ORDERED.

Dated: New York, New York
May 28, 2008



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

¹ Plaintiffs represent that they served the motion to remand on all defendants in this action on May 20, 2008. As of the date of this Order, the Court has not received any objections to plaintiffs’ motion.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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ERNESTO and DIANA MIRANDA,

08 CV 4231

Plaintiffs,

-against-

ABEX CORPORATION, et al,

Defendants.

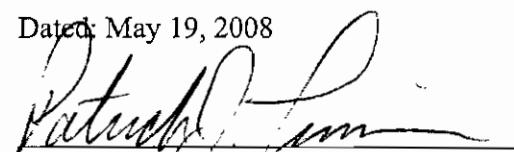
**STIPULATION OF
DISCONTINUANCE AGAINST
CANADIAN COMMERCIAL
CORPORATION AND
PLAINTIFFS' MOTION TO
REMAND**

-----X

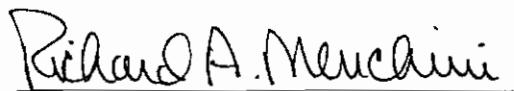
STIPULATION

Plaintiffs Ernesto and Diana Miranda, through their counsel Levy Phillips and Konigsberg, LLP and Defendant Canadian Commercial Corporation, through its counsel Holland & Knight, LLP, hereby agree and stipulate that Defendant Canadian Commercial Corporation is dismissed with prejudice from the above-captioned case.

Dated: May 19, 2008



Patrick J. Timmins, Esq.
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Counsel for Plaintiffs Ernesto and Diana Miranda



Richard A. Menchini, Esq.
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PLAINTIFFS' MOTION TO REMAND

Plaintiffs Ernesto and Diana Miranda, through their counsel Levy Phillips and Konigsberg, LLP, move this Court to remand the above-captioned case to New York Supreme Court pursuant to 28 U.S.C. § 1447.

On May 2, 2008, Defendant Canadian Commercial Corporation (“CCC”) filed a Notice of Removal, removing this case to the District Court. CCC removed the case on the basis of the Foreign Sovereign Immunities Act of 1976 (“FSIA”) 28 U.S.C. § 1602 *et seq* because CCC is wholly owned by the Canadian Government. No other defendant is covered by FSIA as all other defendants are domestic corporations. Pursuant to the stipulation above, CCC has been dismissed from this case. As CCC is no longer a defendant and no other defendant is subject to FSIA, there is no basis on which to maintain the case in Federal Court.

Therefore, Plaintiffs respectfully request that the Court remand this case to New York Supreme Court to the New York City Asbestos Litigation (“NYCAL”) where it is presently on the November 2008 docket.

Dated: May 19, 2008
New York, New York

Respectfully submitted,

By:

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